

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAY 25 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0059-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
RUDY T. CISNEROS,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GREENLEE COUNTY

Cause No. CR2006-002

Honorable Monica L. Stauffer, Judge

REVIEW GRANTED; RELIEF DENIED

Rudy T. Cisneros

Watonga, OK
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Rudy Cisneros seeks review of the trial court's denial of his motion to modify his sentence, presumably filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. We review for an abuse of discretion a trial court's ruling on a petition for post-conviction relief, *State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2001), and find no abuse.

¶2 Cisneros was charged by information with possession of marijuana, possession of marijuana for sale, producing marijuana, possession of a dangerous drug, possession of dangerous drugs for sale, possession of drug paraphernalia, and possession of drug paraphernalia to facilitate sales. He first pled guilty to possession of marijuana for sale, but was later permitted to withdraw that plea and pled no contest to possession of marijuana for sale. Finding both aggravating and mitigating circumstances, the trial court sentenced Cisneros to the presumptive prison term of 2.5 years.

¶3 In his brief motion to modify his sentence, Cisneros asserted his sentence is excessive. He apparently also claimed the trial court had not properly considered the applicable mitigating factors and sought to have the court reweigh them. The court denied the motion without comment. The court did not err in doing so. Cisneros's claim that his sentence is for possessing one marijuana plant is not accurate. Instead, he was sentenced for possessing marijuana for the purpose of selling it, a class four felony. *See* A.R.S. § 13-3405(A)(2) and (B)(4).

¶4 Contrary to his assertion, the court not only considered his lack of criminal history, the court found that it constituted a mitigating factor. And although Cisneros claims the court's finding that aggravating factors constituted a "serious miscarriage of justice, he does not explain why. In fact, because the court nevertheless imposed a presumptive sentence, it was not even required to state any mitigating or aggravating factors it had found.

See A.R.S. § 13-702(B); *State v. Risco*, 147 Ariz. 607, 609-10, 712 P.2d 454, 456-57 (App. 1985); *State v. Winans*, 124 Ariz. 502, 504-05, 605 P.2d 904, 906-07 (App. 1979).

¶5 Accordingly, although we grant review, we deny relief.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge